Exhibit 10

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400 NEW YORK, NY 10281-1022

May 18, 2021

VIA ECF

Hon. Sarah Netburn United States Magistrate Judge Southern District of New York 40 Foley Square, Courtroom 219 New York, N.Y. 10007

Re: SEC v. Ripple Labs, Inc., et al., No. 20 Civ. 10832 (AT) (SN) (S.D.N.Y.)

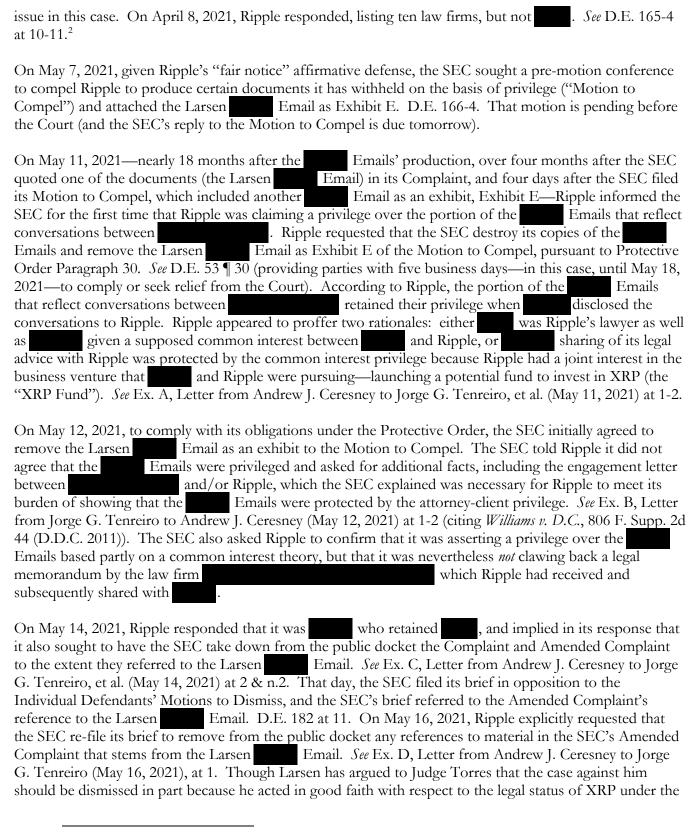
Dear Judge Netburn:

Pursuant to Paragraph 30 of the Protective Order this Court entered (D.E. 53), Plaintiff Securities and Exchange Commission ("SEC") respectfully moves for an order allowing the SEC to use in this litigation certain documents that Defendant Ripple Labs, Inc. ("Ripple") first produced to the SEC in November 2019—one of which the Complaint and Amended Complaint directly quote—but that, for the first time last week, Ripple has claimed are privileged. For the reasons set forth below, Ripple should not be permitted to strategically invoke the attorney-client privilege at this late date.

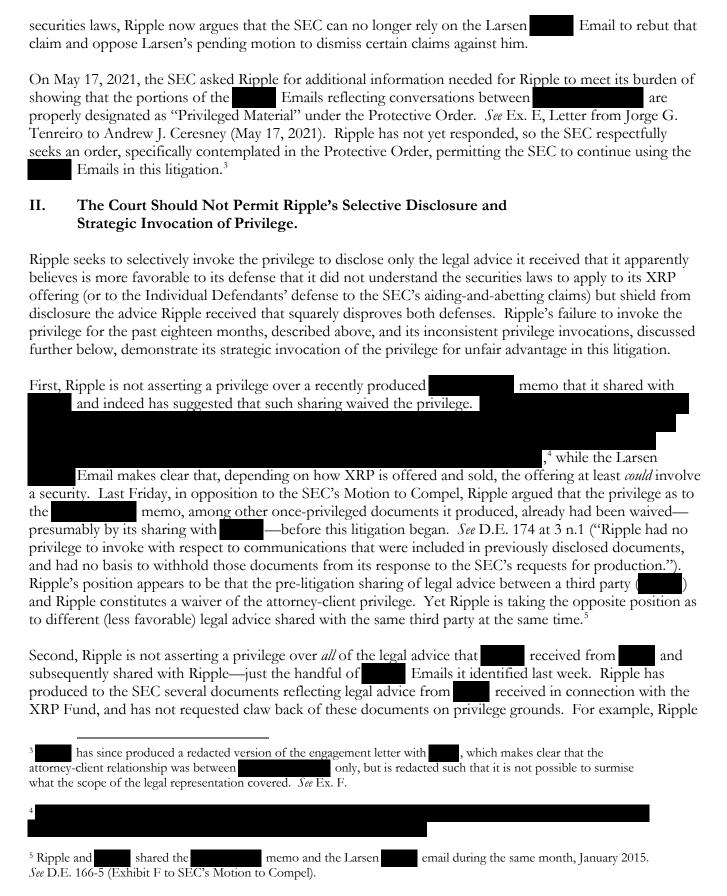
I. Ripple's Belated Assertion of Privilege as to Certain Communications with a Third Party

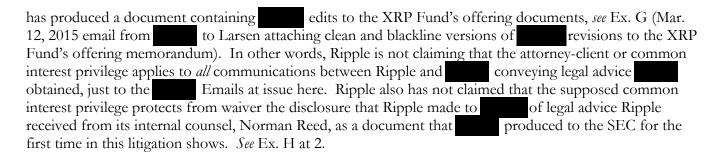
| On November 18, 2019, and continuing through at least March 30, 2020, Ripple produced to the SEC |
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| copies of certain communications between Ripple and a third party, |
| in connection with the SEC's investigation preceding this litigation. ¹ The |
| communications (Emails") include communications between |
| which then forwarded to Ripple employees, including at least one email |
| forwarded to Defendant Christian A. Larsen ("Larsen") (the "Larsen Email"). |
| On December 22, 2020, and February 18, 2021, the SEC filed its Complaint and Amended Complaint in |
| this action, respectively, and both quoted the Larsen Email. See D.E. 4 ¶ 373; D.E. 46 ¶ 401. |
| On March 4, 2021, Ripple filed its Amended Answer ("Answer"). D.E. 51. In response to the Amended |
| Complaint's allegation quoting the Larsen Email string, Ripple's Answer stated that "the documents |
| speak for themselves, and Ripple respectfully refers the Court to the full text of the documents" and then |
| quoted the email itself. D.E. 51 ¶ 401. The Answer also asserted an affirmative defense of lack of fair notice. |
| Id. at 97. In response, the SEC sought further discovery from |
| seeking the names of law firms that had provided Ripple advice on the status of XRP, the digital asset at |
| |

¹ For identification purposes, the Emails are Bates-stamped RPLI_SEC0096888, RPLI_SEC0270424, RPLI_SEC0091288, RPLI_SEC0287628, RPLI_SEC0287635, RPLI_SEC0287639, RPLI_SEC0287644. RPLI_SEC0096888 is Exhibit E to the SEC's Motion to Compel (D.E. 166-4). The SEC respectfully requests that the Court direct Ripple to produce the remaining documents *in camera* for the Court's review.



² Yesterday, Ripple served the SEC with amended interrogatory responses, listing for the first time among the attorneys that provided it advice.





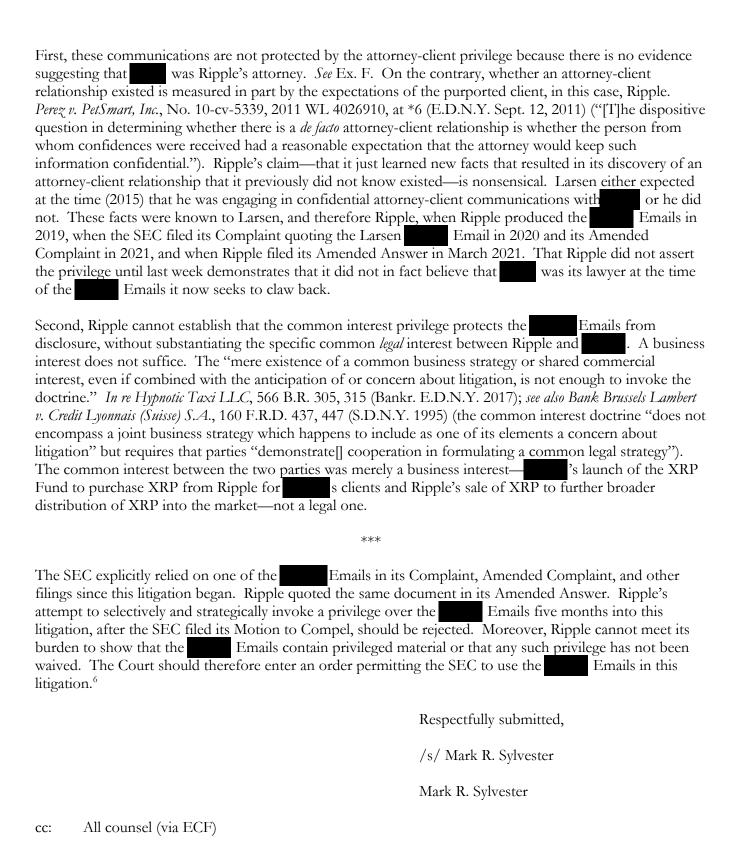
The law does not protect selective, partial disclosures that would provide an incomplete record to the fact finder and deprive a party's opponent from exploring the context of what the party chooses to disclose. *See, e.g., In re Sealed Case,* 676 F.2d 793, 891 (D.C. Cir. 1982) ("[S]ince the purpose of the attorney-client privilege is to protect the confidentiality of attorney-client communications in order to foster candor within the attorney-client relationship, voluntary breach of confidence or selective disclosure for tactical purposes waives the privilege. Disclosure is inconsistent with confidentiality, and courts need not permit hide-and-seek manipulation of confidences in order to foster candor."); *see also Weil v. Inv./Indicators Research & Mymt., Inc.*, 647 F.2d 18, 23-24 (9th Cir. 1981) ("When the privilege holder's conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not. He cannot be allowed, after disclosing as much as he pleases, to withhold the remainder") (citing VIII J. Wigmore, Evidence § 2291 at 636 (alterations omitted)).

whereas the Larsen Email demonstrates how XRP could be a security, which is why the SEC cites the email in its Complaints and pending briefing. Moreover, as the SEC's pending Motion to Compel explains, what Ripple and the individual defendants knew or were told about whether their XRP offering complied with the securities laws is evidence that *they have placed at issue*: Ripple has asserted an affirmative defense of lack of fair notice, and the Individual Defendants argue in their motions to dismiss that they believed in good faith that offers and sales of XRP complied with the securities laws. But the Larsen Email bears directly on their factual assertions and informs any inquiry about what actual notice Ripple had and the Individual Defendants' state of mind.

Defendants cannot present a sanitized version of the facts by selectively disclosing whichever legal advice is more favorable to their defenses and strategically asserting the privilege to withhold other advice that is less favorable to them. "[A] forfeiture may result when a party, in pressing an element of its claim or defense, places in issue the advice of counsel or, more broadly, 'when a party uses an assertion of fact to influence the decisionmaker while denying its adversary access to privileged material potentially capable of rebutting the assertion." Favors v. Cuomo, 285 F.R.D. 187, 199 (E.D.N.Y. 2012) (quoting In re County of Erie, 546 F.3d 222, 229 (2d Cir. 2008)). "[E]ven if a party does not attempt to make use of a privileged communication he may waive the privilege if he asserts a factual claim the truth of which can only be assessed by examination of a privileged communication." Bowne of N.Y. City, Inc. v. AmBase Corp., 150 F.R.D. 465, 488 (S.D.N.Y. 1993); see also One Beacon Ins. Co. v. Forman Int'l, Ltd., No. 04 Civ. 2271, 2006 WL 3771010, at *10 (S.D.N.Y. Dec. 15, 2006) ("[F]airness considerations may also come into play where the party asserting the privilege makes factual assertions, the truthfulness of which may be assessed only by an examination of the privileged communications or documents.") (quoting Am. S.S. Owners Mut. Prot. & Indem. Assoc, Inc. v. Alcoa S.S. Co., 232 F.R.D. 191, 199 (S.D.N.Y. 2005)).

III. The Emails Are Not Privileged.

Even leaving aside Ripple's strategic and selective invocation of the privilege, Ripple cannot meet its burden to establish that the Emails are privileged as a threshold matter.



⁶ Even if the Emails are in fact privileged and the privilege has not been otherwise waived, the SEC still should be permitted to use them for the reasons stated in its Motion to Compel.